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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,336	03/23/2001	Anthony Nicolas Kalloo	2784-25	4418

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EXAMINER

SHAY, DAVID M

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 06/16/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/815, 336

Applicant(s)

Kallro

Examiner

d. shay

Group Art Unit

3739

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE —3— MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- ☒ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- ☒ Claim(s) 1-35 is/are pending in the application.
- Of the above claim(s) 23-35 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-22 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

Claims 23-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in Paper No. 10.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 13-15 and 19 recite only structure thus what further method step is to be inferred is unclear. Claims 16 and 17 are substantial duplicates.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 7, 12-15, 21, and 22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mizuno et al.

See Figure 37 A and B and column 26, line 35 to column 27 line 39, inherently, the incision in the wall would be closed in some manner so that digestive fluids would not leak into and damage the tissues of the peritoneum.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuno et al in combination with Inoue. Mizuno et al teach a method as claimed except for the express teaching of dilating the incision. Inoue teaches a method of dilating an incision. It would have been obvious to the artisan of ordinary skill to dilate the incision, since this would allow the sealing of Mizuno without requiring the excision of healthy tissue, thus producing a method such as claimed.

Claims 1, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuno et al in combination with Vander Salm et al. Mizuno et al teach a method such as claimed except insufflation of the peritoneal cavity. Vander Salm et al teach the desirability of insufflating the peritoneal cavity during endoscopic surgery. It would have been obvious to the artisan of ordinary skill to employ insufflation in the endoscopic procedure since this provides a working space, thus producing a method such as claimed.

Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuno et al in combination with Shermeta. Mizuno et al teach a method such as claimed except for the balloon inflation. Shermeta teach the use of a dual balloon fixation method for devices inserted through the stomach wall. It would have been obvious to the artisan of ordinary skill to employ the dual balloon fixation method of Shermeta, in the method of Mizuno et al, since this would enable the endoscopic device to be fixed while the laproscopic instrument is manipulated into position, thus producing a method such as claimed.

Claims 1, and 7-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuno et al in combination with Wilson-Cook Brochure. Mizuno et al teach a method such as

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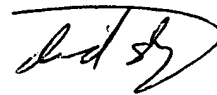
claimed except for the needle knife and organ removal. Wilson-Cook Brochure teaches the use of a retractable needle knife in an endoscopic surgical procedure. It would have been obvious to the artisan of ordinary skill to employ a retractable needle knife in the method of Mizuno et al since this would enable the removal of bile stones and further to remove an organ e.g. the gall bladder since this is sometimes necessitated when stone removal is intended thus producing a method such as claimed.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuno et al in combination with Wilson-Cook Brochure as applied to claims 1 and 7-19 above, and further in view of Bard Brochure. Bard Brochure teaches the use of a balloon dilator for a biliary procedure. It would have been obvious to the artisan of ordinary skill to include a dilation balloon on the needle knife of Wilson- Cook Brochure since this would enable the passage to be dilated and thus facilitate the insertion of the needle knife, thus producing a method such as claimed.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.

Shay/DI

June 6, 2003



DAVID M. SHAY  
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GROUP 330